

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

9	CHRISTIAN A. RODRIGUEZ,	)	1:05-cv-00573 OWW SMS
10	Plaintiff,	)	ORDER RE: FINDINGS AND
11	v.	)	RECOMMENDATION TO DENY
12	COUNTY OF KINGS, et al.,	)	PLAINTIFF'S MOTION TO
13	Defendants.	)	REMAND ACTION FOR DEFECT IN
14		)	REMOVAL PROCEDURE (DOCS. 6,
		)	22)
		)	ORDER RE: FINDINGS AND
		)	RECOMMENDATION TO DECLINE
		)	TO EXERCISE SUPPLEMENTAL
		)	JURISDICTION AND TO REMAND
		)	ACTION TO STATE COURT (DOC.
		)	22)

18 Plaintiff is proceeding with a civil action in this Court.

19 On June 29, 2005, the Magistrate Judge filed findings and a
20 recommendation that Plaintiff's motion to remand the action to
21 state court for a defective removal be denied, and findings and a
22 recommendation that the Court decline to exercise supplemental
23 jurisdiction over the action and that the matter be remanded to
24 the Superior Court of the County of Kings. The findings and
25 recommendations were served on all parties and contained notice
26 that any objections to the findings and recommendations were to
27 be filed within thirty (30) days of the date of service of the
28 order. Defendants filed timely objections to the findings and

1 recommendations; Plaintiff has filed a reply to Defendants'
2 objections and a request for judicial notice in connection with
3 the reply. The undersigned has considered the objections, the
4 reply, and the request for judicial notice and has determined
5 there is no need to modify the findings and recommendations based
6 on the points raised in the objections. Defendants correctly
7 argue that supplemental jurisdiction is not destroyed by
8 elimination of the basis for original jurisdiction. *Albingia*
9 *Versicherings AG v. Schenker International Inc.*, 344 F.3d 931,
10 938-39 (9th Cir. 2003). A Plaintiff may not compel remand by
11 amending a complaint to eliminate the federal question upon which
12 removal was based. *Sparta Surgical Corp., v. National Ass'n of*
13 *Security Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998). A
14 court's exercise of jurisdiction under 28 U.S.C. § 1337(c) is
15 informed by the "Gibbs" factors: "judicial economy, convenience,
16 fairness, and comity. *Acri v. Varian Associates, Inc.*, 114 F.3d
17 999, 1001 (9th Cir. 1997).

18 "Supplemental jurisdiction must be asserted," unless one of
19 the four § 1337(c) factors applies and is invoked by the court.
20 *Executive Software v. United States Dist. Court*, 24 F.3d 1545,
21 1556 (9th Cir. 1994). Here, by moving to remand the issue as
22 presented to the Magistrate Judge for decision on Findings and
23 Recommendations it is obvious that the Plaintiff is seeking to
24 avoid a federal forum, despite that most prison condition cases
25 concerning the state prison system are litigated in federal
26 courts, as is evidenced by the recusal of the entire Kings County
27 bench from this case and the thousands of state prison conditions
28 cases pending before the federal court. In reaching her

1 determination the Magistrate Judge noted that there are no
2 federal claims that remain before the Court. Neither the Court
3 nor the parties have expended "substantial" time or resources in
4 this case, except in addressing Plaintiff's attempt to avoid the
5 federal forum. The parties have not engaged in discovery. The
6 federal claims are not entirely exclusive of elements required to
7 be proved under the state claims.

8 The Magistrate Judge's reasons for recommending remand are:

9 (1) only state law questions remain and "it is appropriate that a
10 state court determine and apply the many questions of state law
11 that are raised in the amended complaint;" (2) the fact plaintiff
12 originally filed federal claims does not necessarily mean that a
13 later but diligent choice of a state forum constitutes
14 manipulative conduct;" and (3) the fact that some recusal of
15 "some state court judges has occurred does not ipso facto render
16 the case appropriate for federal court." Without analysis, the
17 Magistrate Judge then concluded there was "no showing that a
18 state forum is unavailable or inappropriate."

19 The nature of the claims and legal issues underlying the
20 Plaintiff's decedent's suicide, implicate state and federal law
21 regarding immunities, state and federal rules and regulations
22 regarding the operations of detention facilities and penological
23 rules and policies under the auspices of the County of Kings. In
24 addition to the recusal of the Kings County bench, the potential
25 for concern that Kings County jurors who are taxpayers will
26 ultimately hear and decide the case about the substance and
27 quality of the County-run juvenile boot camp and detention
28 facility. Although federal qualified immunity and state

1 statutory immunities are not identical, the underlying
2 jurisprudence is similar. Under the totality of circumstances,
3 the Court cannot find that the determinations made by the
4 Magistrate Judge supporting remand of the case are clearly
5 erroneous. The Court does not accept that the remand is not
6 manipulative. It is. The amendment of the complaint was an
7 intentional action to avoid federal jurisdiction.

8 In deciding whether to dismiss or remand, the court may
9 consider whether Plaintiff has engaged in "manipulative tactics"
10 after removal in order to get back to state court: "If the
11 plaintiff has attempted to manipulate forum, the court should
12 take his behavior into account in determining whether the balance
13 of factors to be considered under the pendent jurisdiction
14 doctrine support a remand in the case." *Carnegie-Mellon Univ. v.*
15 *Cohill*, 484 U.S. 343, 357, 108 S.Ct. 614, 622, 98 L.Ed.2d 720
16 (1988). The Plaintiff originally chose state court. The effort
17 to return to the forum of choice is not in bad faith.

18 In accordance with the provisions of 28 U.S.C.
19 § 636(b)(1)(C) and *Britt v. Simi Valley United School Dist.*, 708
20 F.2d 452, 454 (9th Cir. 1983), a de novo review of the matter has
21 been conducted. Having carefully reviewed the entire file,
22 including the objections, the report and recommendation are
23 supported by the record and proper analysis.

24 Accordingly, IT IS HEREBY ORDERED:

25 1. That the Findings and Recommendations filed June 29,
26 2005, are ADOPTED; and

27 2. Plaintiff's motion to remand the action for defective
28 removal is DENIED; and

3. The Court DECLINES to exercise supplemental jurisdiction over this action for the reasons stated; and

4. The action is ORDERED remanded to the Superior Court of California for the County of Kings.

DATED: August 25, 2005.

/s/ OLIVER W. WANGER

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

rodriguez v. kings order